



THE PRINCE GEORGE'S COUNTY GOVERNMENT

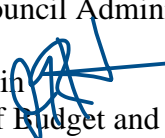
Office of Audits and Investigations


March 15, 2022

FISCAL AND POLICY NOTE

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin 
Director of Budget and Policy Analysis

FROM: Kassandra Fields 
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-012-2022 Mother's Right to Feed

CB-012-2022 (*Proposed by: Chair Hawkins*)

Assigned to the Committee of the Whole

AN ACT CONCERNING A Nursing Mother's Right to Feed, for the purpose of clarifying all mothers' right to breast-feed in County buildings and /or property and requiring lactation rooms in certain County buildings and /or property and establishing certain requirements for employers with nursing employees.

Fiscal Summary

Direct Impact:

Expenditures: Additional expenditures required dependent upon buildings which need to be retrofitted.

Revenues: None.

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Indirect Impact:

None.

Legislative Summary:

CB-012-2022, sponsored by Chair Hawkins, was presented to the Council on March 1, 2022, and referred to the Committee of the Whole (COW). CB-012-2021 would incorporate the State requirements relating to the rights of breast-feeding mothers within Subtitle 12. Health, Division 7, Subdivision 1 of the County Code. It would create Subdivision 2, *Lactation Rooms in County buildings*, defining terms, and setting forth the requirements of the lactation rooms. The Bill would also add Subdivision 3, *Employers*, which would require employers to allow reasonable break times for lactating mothers to express milk as necessary up to one (1) year after the birth of the child. Subdivision 3 would also require employers to provide a designated area, other than a bathroom, that would shield the mother from view and intrusion of co-workers and/or the general public whilst expressing her milk.

Current Law/Background:

Federal law:

President Obama signed the Affordable Care Act (ACA) on March 30, 2010. Among many provisions, Section 4207 of the law amends the Fair Labor Standards Act (FLSA) of 1938 (29 U.S. Code 207)¹ to require an employer to provide reasonable break time for an employee to express breast milk for her nursing child for one (1) year after the child's birth each time such employee has need to express milk. The employer must also provide a place, other than a bathroom, for the employee to conduct this activity. If these requirements impose undue hardship, an employer that employs fewer than 50 employees is not subject to these requirements. The federal requirements shall not preempt a state law that provides greater protections to employees.²

Congress passed the Fairness for Breastfeeding Mothers Act of 2019 in July 2019³. The law requires certain public buildings that are open to the public and contain a public restroom provide a lactation room, other than a bathroom. The space must be hygienic and shielded from public view, and available for use by members of the public to express milk. Additionally, it must contain a chair, working surface and an electrical outlet.

State Law:

Section §20–801 of the Health-General Article of the Maryland Code provides that:

¹ <https://www.dol.gov/agencies/whd/nursing-mothers/law>

² <https://www.ncsl.org/research/health/breastfeeding-state-laws.aspx>

³ <https://www.congress.gov/bill/116th-congress/house-bill/866>

- (a) A mother may breast-feed her child in any public or private location in which the mother and child are authorized to be.
 - (b) A person may not restrict or limit the right of a mother to breast-feed her child.⁴
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Discussion/Policy Analysis:

Breastfeeding has many known health benefits for infants, children, and mothers, and is a key strategy to improving public health. The American Academy of Pediatrics recommends that infants are exclusively breastfed for about the first six (6) months with continued breastfeeding while introducing complementary foods for at least one (1) year⁵.

Following return to work or school, a breastfeeding parent must express breast milk about as often as the baby would usually feed in order to maintain their milk supply, ensure that they have enough expressed milk to feed their child, and to avoid health complications. As a general rule, in the first few months of life, babies need to breastfeed eight to 12 times in 24 hours. As the baby gets older, the number of feedings may go down. Pumping can take about 10 to 15 minutes once the parent gets used to using the breast pump. Sometimes it may take longer⁶.

CB-012-2022 seeks to codify federal and State laws governing mothers' rights to breastfeed in County buildings and requiring employers in the County to provide reasonable accommodations for nursing employees. It creates Division 7, entitled *Breastfeeding of Children*, under Subtitle 12. Health of the County Code. Subdivision 1, entitled *State Requirements*, sets forth that a nursing mother should be afforded a location in order to express her milk. It further expresses and reinforces the federal and state laws that prohibit restricting anyone's rights to breastfeed.

Subdivision 2, entitled *Lactation Rooms in County Buildings*, provides the definitions of *County Building*, *Covered County Building*, and *Lactation Room*. Section 12-170, *Lactation Room Required*, provides that the County shall ensure County buildings and/or properties contain a lactation room for use by members of the public. It delineates exceptions⁷ to the requirement and sets forth all new construction would be required to create a space for lactation, unless it is "unfeasible" to do so. The last provision of this subdivision clarifies that an individual seeking to conduct these activities would not be authorized access to a County building to do so if public access isn't allowed in the particular area.

⁴ <https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=ghg§ion=20-801&enactments=false>

⁵ <https://publications.aap.org/pediatrics/article/129/3/e827/31785/Breastfeeding-and-the-Use-of-Human-Milk>

⁶ <https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work>

⁷ Under §12-170(b), a covered public building and /or property may be excluded from the general requirement if:

- (1) the County building and /or property –
 - (A) does not contain a lactation room for employees who work in the building; and
 - (B) does not have a room that could be repurposed as a lactation room or a space that could be made private using portable materials, at a reasonable cost; or
- (2) new construction would be required to create a lactation room in the County building and the cost of such construction is unfeasible.

Subdivision 3, *Requirements for Working Mothers*, codifies the state code that an employer is required to provide reasonable break periods for a nursing mother to express breast milk, up to one (1) year after the child’s birth–each time she has the need to express it. Further, that the employer must provide a place (other than a bathroom) that is shielded from public view and free from intrusion.

Fiscal Impact:

- *Direct Impact:*

At the time of this report, information necessary to determine the amount of any County expenditures necessary to fully comply with the Bill’s provisions was not provided to Council staff. However, Executive Branch staff provided a preliminary cost estimate of \$60,000 to retrofit one room/area into a designated lactation room. It is not clear what necessary modifications make up the estimated \$60,000 per lactation room cost, and in any event, the full impact would also be dependent upon the number of buildings which currently do not have lactation rooms.

- *Indirect Impact:*

None.

- *Appropriated in the Current Fiscal Year Budget:*

N/A.

Items for Committee Consideration:

- Proposed Subdivision 3 contained within CB-012-2022 is entitled *Employers*. However, there is no definition of “Employer” in the Bill. The Council may wish to consider including a definition for “Employer” in this Subdivision.
 - Section 12-170, *Lactation Room Required*, provides that the County shall ensure County buildings and/or properties contain a lactation room for use by members of the public, unless it is “unfeasible” to do so. The Council may wish to clarify the meaning of “unfeasible” in this context.
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Effective Date of Proposed Legislation

The proposed Act shall take effect forty-five (45) calendar days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please call me.